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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 4 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

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The meeting was called to order at 10.10 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/2000/4-8, 35, 36, 38 and 39; E/CN.4/Sub.2/2000/NGO/1 and 2; E/CN.4/2000/30)

1. The CHAIRPERSON invited the Sub-Commission to continue consideration of agenda item 2.

2. Mr. ALFONSO MARTÍNEZ said that, in dealing with agenda item 2, the Sub-Commission had often given precedence to violations of a certain category of rights, namely civil and political rights, to the detriment of economic, social and cultural rights. Yet, as Ms. Warzazi and Mr. Guissé had clearly shown, all of those rights were interdependent and indissociable. Furthermore, the emphasis placed by the Sub-Commission on violations in developing countries suggested that developed countries were not affected by such situations. However, it was enough to look at recent events in Germany, which had been the scene of racist attacks, and to read the part of the 1998 Amnesty International report on the United States of America, which referred to the application of the death penalty to minors and mentally handicapped persons, the situation in prisons and discrimination against minorities, to be convinced that there were also human rights violations in developed countries.

3. The military operations conducted in Kosovo under the guise of "humanitarian intervention" were contrary to international law, including Article 2 and Chapter IX of the Charter of the United Nations. It was intolerable, moreover, that soldiers of the peacekeeping forces supposed to be protecting the population should have committed violations in that part of the Federal Republic of Yugoslavia.

4. Mr. EIDE said that, 20 or 30 years previously, repressive Governments had deliberately violated the rights of their citizens, particularly in countries of the socialist bloc and in South America, whereas most Governments now were democratic and recognized human rights. Although at first sight that might seem encouraging, it had to be admitted that some perpetrators of massive violations in the past still enjoyed impunity. In that regard, the trial of General Pinochet and his accomplices in Chile would be of crucial importance for the future rule of law in Latin America.

5. Violations now had a different nature and different causes from those of the past. First of all, there was the problem of the inability of some Governments, because of internal political divisions, to acknowledge and take action to fulfil their duties under international human rights instruments. It would be worth reflecting on how to make sure that States applied the principles set forth at a previous meeting by Mr. Yokota concerning the duties of the State with regard to human rights, which included prevention, respect, protection, sanction and remedies. The United States, to take one example, was a country that could be said to have a very mixed record on human rights. During the twentieth century it had twice come to the rescue of Europe and

had played a leading role in creating the international system for the protection of human rights, yet it had been very slow to ratify the relevant instruments. The fact that it was one of only two States not to have ratified the Convention on the Rights of the Child was no coincidence: it was the country that resorted most often to the execution of juvenile offenders. Other shortcomings included the lack of effective protection of human rights in that country. No real action had been taken, for instance, to curb weapons sales and to prevent children from bringing guns to school and using them on other students.

6. An increasingly common problem today was that groups in multi-religious or multi-ethnic societies failed to achieve peaceful accommodation based on mutual respect and tolerance. Fundamentalist religious groups were a matter of concern, particularly in Afghanistan and Pakistan, and the same applied to ethnic groups that sought to dominate or assimilate others. A case in point was that of Turkey, where, according to a statement by the Turkish Minister of Human Rights in the early 1990s, internally displaced Kurds had totalled more than 2 million, and not 360,000, as claimed the previous day by the observer for that country. Also contrary to what the latter had claimed, the Turkish armed forces had set fire to Kurdish villages, forcing their inhabitants to flee. The programme mentioned by the observer for Turkey for encouraging them to return to the villages was certainly to be welcomed, but only if the persons concerned were allowed to go back to their own villages and were not resettled elsewhere.

7. In Sri Lanka, the ethnic conflict had degenerated to the point where a Tamil human rights defender, Neelan Thiruchelvan, had been assassinated the previous year by a terrorist of his own ethnic group and children were now being used as combatants by some factions. Extreme nationalism had also led to massive violations and refugee flows, as exemplified in the Nagorny Karabakh region.

8. Extensive violations continued in Kosovo even though international peacekeeping forces were present, and that raised questions about the ultimate responsibility for those violations.

9. Another set of problems arose from extreme poverty and income inequality in a world of plenty. Like Mr. Guissé and Ms. Warzazi, he thought that armed conflicts were closely linked with poverty. The Sub-Commission should also address the serious question of the arms trade, from which the economic benefits went to the rich in the industrialized countries, while the poor in developing countries bore the heavy cost in terms of human lives.

10. Concerning follow-up to decisions taken at previous sessions, he would like the information provided by Mr. Pinheiro and Mr. Weissbrodt, as well as by himself, to be reflected in the report of the current session. The Sub-Commission would pay close attention to the treatment of the indigenous peoples in Mexico and would monitor the development of democracy in Peru. With regard to Colombia, as stated by Ms. Hampson, the United States should, in cooperation with other States, focus more on the building of an independent system for the administration of justice and less on support to the Colombian armed forces. Indonesia now had a reformist Government but there remained very problematic elements within the armed forces that tended to exploit ethnic differences for their own evil purposes. He also noted with regret that there had not yet been any return of Bhutanese refugees. Despite the dialogue undertaken between the countries concerned and involving the Office of the United Nations

High Commissioner for Refugees, the situation was unchanged and he hoped that the Commission on Human Rights would address that issue at its next session. He urged the two parties to start the verification process and proceed quickly with repatriation.

11. Ms. DAES said that on the threshold of the twenty-first century serious infringements of humanitarian law and violations of human rights were continuing throughout the world. International and regional instruments, basic rules of international law and important resolutions of the General Assembly, the Security Council and other competent bodies of the United Nations system, as well as decisions of international and regional courts on human rights were not being respected. In general terms, she shared the views expressed on that subject by Mr. Weissbrodt, Ms. Hampson, Mr. Eide and Mr. Yokota.

12. The institution of an embargo was, in her view, one of the most inhuman measures that could be applied. Embargoes entailed violations of the fundamental rights of particularly vulnerable groups, including children, women, sick persons, the elderly, minorities and indigenous peoples. She had prepared a draft resolution on that subject recommending that a workshop should be organized by the Office of the High Commissioner for Human Rights, in which experts could participate. The text of the draft would be distributed to members for their consideration and possible adoption.

13. Another serious violation of international law was the military occupation of all or part of a land by foreign forces.

14. In some countries, military forces, paramilitary groups or armed civilians oppressed people, persecuted human rights defenders and tortured individuals. It was time for the international community to react to such grave violations.

15. Lastly, the Sub-Commission should consider more systematically the protection of so-called third-generation rights, which were collective rights and included the right to self-determination, the right to development and the right to a clean environment.

16. Mr. VAHABZADA (Observer for Azerbaijan), speaking in exercise of the right of reply, said that it was for the United Nations bodies and not the Armenian Government to judge how far a country was respecting the international human rights instruments. The Security Council, in its resolutions on the conflict between Azerbaijan and Armenia, had condemned the occupation of Azerbaijani territory and had called for the occupation forces to be withdrawn immediately and unconditionally. Regarding the comments of the observer for Armenia on the right of peoples to self-determination, he would point out that the Security Council, in the same resolutions, had underlined the need to respect territorial integrity and had stressed the illegal nature of the use of force to seize any territory.

17. He wished to draw attention to certain human rights issues that the representative of the Armenian Government had neglected to mention.

18. Mr. JOINET, speaking on a point of order, said that the representative of Azerbaijan was committing the same breach of procedure as the representative of Armenia. He should therefore also be interrupted, for the sake of fairness.

19. The CHAIRPERSON reminded the observer for Azerbaijan that statements made in exercise of the right of reply were governed by the same rules as other statements.

20. Mr. SHRESTHA (Observer for Nepal), speaking in exercise of the right of reply, said that his Government had made every possible effort to begin the verification process in the refugee camps promptly. Nepal had participated in the Ministerial Joint Committee meetings held in Bhutan in May 2000, during which the Nepalese negotiators had sought to accommodate the often inflexible Bhutanese stand on technical and other details of the joint field verification. The talks, however, had ended rather inconclusively. His Government was still awaiting a response from Bhutan to its proposal to move the process forward.

21. The Bhutanese refugee problem was not a problem of Nepal alone, but a problem also of the international community. Nepal called for a collective effort so that the refugees would be able to return to their country in safety and without delay.

22. Ms. RUSTAM (Observer for Indonesia) said that the multi-dimensional crisis inherited from previous regimes which her Government was now still facing, including the inter-community violence in various parts of the country, was very complex and often driven by local economic and social disparities.

23. Her Government was making every effort, through dialogue rather than confrontation, to put an end to the conflicts, such as those in Aceh, in the Moluccas and in Papua, with a view to promoting national reconciliation.

24. With regard to the conflict in the Moluccas, the Government had from the beginning engaged religious and community leaders in dialogue to re-establish enduring peace in the islands. On 26 June 2000, however, in the face of the ferocity of the clashes, the Government had declared a state of emergency there and had conducted a naval blockade to prevent suspicious elements from entering the territory and smuggling of arms and ammunition.

25. In addition, her Government was continuing to make sure that members of the armed forces did not side with any of the various factions and had taken strong action against those who had violated the code of conduct. The Government was also continuing to apprehend members of armed groups coming from outside the area. It hoped to restore law and order soon in the Moluccas and to promote reconciliation among the people in those islands.

26. Regarding Aceh, the Government had signed a joint understanding with GAM for a humanitarian pause in order to provide assistance to the areas affected by the conflict, to reduce tension and to promote confidence-building. Both sides had confirmed their commitment to honour the understanding in a spirit of cooperation and good will. As a result, the situation in the field was slowly returning to normal.

27. Lastly, her delegation wished to thank those speakers who had offered to help the Indonesian Government in resolving the problems it faced and to improve the human rights situation in the country.

28. Mr. KIM YONG HO (Observer for the Democratic People's Republic of Korea) said that his delegation categorically rejected the allegations made by Mr. Yokota against his country with regard to the issue of disappearances. The problem of disappearances did not, in fact, arise at all in the Democratic People's Republic of Korea. However, it was a chronic problem in Japan. In that country, a girl kidnapped 10 years previously in Niigata had recently reappeared in the very location from which she had been abducted.

29. The CHAIRPERSON reminded the observer for the Democratic People's Republic of Korea that, under the rule established by the Sub-Commission, States should confine their replies to the human rights situation in territories under their jurisdiction.

30. Mr. KIM YONG HO (Observer for the Democratic People's Republic of Korea) pointed out that Japan had forced some 6 million Koreans to serve on the battle fields and in the mines, and had obliged some 200,000 Korean girls and women to become sex slaves for the Japanese army, and that a million Koreans had perished under the colonial regime imposed by Japan in the Korean peninsula for more than 40 years. That was why the entire Korean people and the international community were continuing to call on Japan to apologize for those crimes against humanity and compensate the victims.

31. The CHAIRPERSON reminded the speaker once again of the rule she had just explained.

32. Mr. KIM YONG HO (Observer for the Democratic People's Republic of Korea) urged the members of the Sub-Commission to uphold the principles of objectivity and impartiality which they were expected to observe as independent experts.

33. Mr. EIDE said that, unlike Indonesia's statement in exercise of the right of reply, which had been both constructive and encouraging, the remarks of the Democratic People's Republic of Korea were not at all relevant to the topic under consideration and appeared to be a diversionary manoeuvre.

34. Mr. AKRAM (Observer for Pakistan) said that no rule of procedure could prevent Pakistan from advocating the right of the people of Kashmir to exercise their right to self-determination in a free and fair referendum, in conformity with the promise made to them by the United Nations through a resolution of the Security Council.

35. He had recently visited Azad Kashmir and had seen the many refugees who had had to flee from occupied Kashmir. He had also witnessed Indian artillery shelling over the control line.

36. The CHAIRPERSON reminded the speaker that observers for Governments were entitled to speak only about human rights violations in territories under their jurisdiction.

37. Mr. AKRAM (Observer for Pakistan) said that Kashmir was a disputed territory and the rule in question was therefore not applicable. Moreover, if it were no longer possible to speak of the rights of peoples such as the people of Jammu and Kashmir, the Sub-Commission would cease to have any raison d'être.

38. Mr. EIDE said that no one was denying Pakistan the right to speak about Jammu and Kashmir in forums other than the Sub-Commission.

39. Mr. SULAMAIN (Observer for Nigeria) said that, contrary to what had been claimed by the International Commission of Jurists, the death penalty could not be applied in Nigeria to persons under 18 years of age. Even in cases where juveniles had been convicted of capital offences, the death sentence had been commuted to terms of imprisonment.

40. With regard to the case of Mr. Chidiebere Onuoha, who had been found guilty of armed robbery, sentenced to death and executed, it should be pointed out that the person in question had been well over 18 years of age at the time of the commission of the offence. That execution did not, therefore, constitute either a breach of Nigeria's national legislation or a violation of the international instruments in force, including the Convention on the Rights of the Child.

41. Ms. DEMA CHODEN (Observer for Bhutan) said that the observer for Nepal had incorrectly portrayed the nature of the problem of the refugees in the camps in eastern Nepal and the status of the bilateral talks between Bhutan and Nepal. The Sub-Commission had already been apprised of the various initiatives taken and progress made in that regard. Her delegation hoped that the observer for Nepal was not seeking to undermine the recent positive developments in the bilateral process between the two countries.

42. Mr. PRASAD (Observer for India) recalled that the day before the observer for Pakistan had been interrupted by the Chairperson because he had raised the issue of human rights in India. At the current meeting, on the pretext of availing himself of the right of reply, the observer for Pakistan had again overstepped the Sub-Commission's rule. The Indian delegation therefore requested that the comments made by the observer for Pakistan on that occasion should be left out of the summary record.

43. Mr. SHRESTHA (Observer for Nepal) said that the Government of Nepal was firmly committed to seeking a lasting solution to the problem of Bhutanese refugees through bilateral negotiations with Bhutan and he hoped that the refugees would be able to return home as soon as possible in accordance with international rules.

44. Mr. AKRAM (Observer for Pakistan) recalled for the benefit of the Indian delegation that agenda item 2 was entitled "Question of the violation of human rights ... in all countries, with particular reference to colonial and other dependent countries and territories ...". Jammu and Kashmir fell into that category. According to the Security Council resolution, it was a disputed territory. For the time being, the territory was part of neither India nor Pakistan. By virtue of its mandate, the Sub-Commission had to examine serious human rights violations committed on that dependent territory.

45. Mr. EIDE said that the Sub-Commission was in no way trying to stop the question of human rights in Jammu and Kashmir being discussed. In fact, the NGOs and experts present had been left free to express their views on the matter without being interrupted. The aim of the Sub-Commission's rule in that respect was to prevent States from using the Sub-Commission as a forum for airing their political differences.

46. Mr. SHARAT SABHARWAL (Observer for India) said that the rule also applied to Pakistan. Therefore, the comments made by that country's observer regarding Jammu and Kashmir should not appear in the summary record.

47. Mr. JOINET said that the press release had mentioned the comments made by the observer for Armenia. He thought, therefore, that in all fairness the same should apply to the comments made by the observer for Azerbaijan, even though he had himself asked for the latter's statement to be interrupted.

48. Referring to a comment made by Ms. Warzazi, he wished to make it clear, with regard to elections in Austria, that his comments had been directed neither at the Austrian Government nor at the Austrian people, but only at the leader of a xenophobic Austrian party.

49. Mr. GUISSÉ, in reply to Mr. Joinet, said that his comments on Zimbabwe had been aimed only at facilitating the search for a peaceful and democratic solution to the problems facing that country. He had obviously had no intention of favouring any particular group or race.

50. Mr. FAN Guoxiang suggested that the Sub-Commission might discuss in private the matter of how far Government observers should be permitted to express their views on particular issues.

51. The CHAIRPERSON said she had taken note of the request. With that, consideration of agenda item 2 was closed.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES;

(b) XENOPHOBIA;

(c) WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

(agenda item 3) (E/CN.4/Sub.2/2000/11; E/CN.4/Sub.2/2000/NGO/8 and 15; A/CONF.189/PC.1/13 and Add.1)

52. Ms. MORENO FONTES CHAMMARTIN (International Labour Organization - ILO) said that ILO attached great importance to the preparations for the World Conference against Racism, which was to address, inter alia, the spread of xenophobia, which was directed in particular against migrant workers. ILO had already launched a project entitled "Combating discrimination against (im)migrant and ethnic minority workers in the world of work". ILO research had found that at least one in every three migrant or ethnic minority job applicants was the victim of discrimination. ILO had established an inventory of anti-discrimination measures to be adopted by employers, workers, communities and Governments. It had also recommended to the United Nations treaty bodies, particularly the Committee on Economic, Social and

Cultural Rights, that they pay particular attention within their respective mandates to the consideration of measures to protect migrant workers' rights, especially the right to equality in employment.

53. ILO suggested that the following items be included in the agenda of the World Conference against Racism: assessment of the phenomenon; determination of priorities; review of applicable international standards and mechanisms; identification of the most effective means of countering the phenomenon; and international coordination and monitoring. ILO was in a position to contribute a considerable body of specific data on discrimination against migrant workers in some countries and on anti-discrimination measures already implemented by Governments and by employers' and workers' organizations.

54. ILO was convinced that the Conference would lead to improved compliance with United Nations and ILO standards outlawing discrimination against migrant workers.

55. Mr. BOSSUYT (Special Rapporteur), introducing his preliminary report on the concept and practice of affirmative action (E/CN.4/Sub.2/2000/11), said that he had undertaken the study at the request of the Committee on the Elimination of Racial Discrimination, of which he was now a member. His next report on the matter would reflect the replies of Governments to the questionnaire recently sent to them, which was annexed to the preliminary report.

56. The first part of the report dealt with the concept of affirmative action in international law, reviewing, in particular, special measures on behalf of particular groups under a number of international treaties. He had also studied the travaux préparatoires of the treaties and the precedents established by the main treaty bodies.

57. The second part of the report dealt with the limits set on affirmative action. International law set two major limits on such measures: they should not lead to discrimination and they should be temporary. The question was at what point were special measures no longer warranted and who was to determine when that point had been reached.

58. There was also a certain amount of ambiguity in the terms used. It was now universally agreed that the term "discrimination" should be confined to arbitrary or unlawful differences in treatment. The word "distinction" was a neutral term used in cases where it had yet to be established whether a difference in treatment was justified. The term "differentiation", on the other hand, was used when the difference in treatment was deemed to be lawful.

59. Discrimination, in the generally accepted sense of the term, denoted treatment motivated by a specific aim. The Charter of the United Nations, for example, mentioned 4 such motives (race, language, religion and sex) and the Universal Declaration of Human Rights mentioned 12. But it was not the motive as such that determined whether discrimination had occurred. Another relevant factor was the area in which treatment had differed, i.e. a right or freedom guaranteed either by international treaties or by constitutions or other national legislation. The really decisive factor was the link between the motive and the right in respect of which the difference in treatment had occurred. In the case of affirmative action, there should be a demonstrable link

between the two. In other words, the motive should be relevant to the right in question. The objective to be attained through the affirmative measure was not necessarily of sufficient importance to justify any difference in treatment.

60. Mr. JOINET said that Mr. Bossuyt's preliminary report was on the right track. He had used the document in France before the Court of Cassation when it had been considering the question of the right of self-determination of the Kanak people of New Caledonia. The Court of Cassation had expressed the view that the concept of affirmative action was lawful in that case.

61. Mr. FAN Guoxiang said that the report was very comprehensive. In Asian countries such as China, the concept of affirmative action also existed but its content was different. He noted that it had originated in the United States of America with the civil rights movements which advocated the adoption of special measures on behalf of women and minorities. The concept had led to problems later on, having been viewed as discriminatory by men and majorities.

62. He thought that the concept of affirmative action should be fleshed out and made more explicit, especially its fields of application in different countries, before it became a norm of international law. He also thought that the language used in the report should be made more accessible to lay people and that there should be more reference to case law. Lastly, he considered that the idea that affirmative action measures should be temporary was questionable.

63. Mr. EIDE said that equality between human beings was a fundamental principle b.. the achievement of equality in practice sometimes called for certain adjustments. The distinction between (temporary) affirmative action and (permanent) protective measures on behalf of minorities was, in his view, very useful. However, it was sometimes difficult to determine - hence the need to shed more light on the subject.

64. He thought that greater account should be taken of international instruments pertaining to minorities such as the Framework Convention for the Protection of National Minorities and the International Convention on the Elimination of All Forms of Racial Discrimination. He also observed that considerable emphasis had been placed, since the Second World War, on the rights of persons belonging to minorities, which had important implications for the discussion.

65. Mr. SIK YUEN said he was pleased to note that the term "affirmative action" had replaced "positive discrimination". The fact that, according to the report, affirmative action could not in itself be viewed as discriminatory was, in his view, a crucial point.

66. He considered that the concept of affirmative action already formed part of international law, as evidenced by the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. It was a concept that substantially contributed to the promotion of respect for human rights. In a country like Mauritius, it would have taken a long time to realize the population's true aspirations if the principles of affirmative action had not been applied immediately after independence.

67. To elucidate further the concept of affirmative action, the report should provide examples of situations in which it had been applied and of the results achieved. For example, the adoption

of tax measures designed to encourage business firms to employ disabled persons could produce excellent results within a short time. He therefore recommended that the Special Rapporteur should focus on the practical aspects of affirmative action.

68. Mr. GOONESEKERE said that the adoption of affirmative action measures on behalf of a particular group inevitably had consequences that other groups viewed as undesirable. That had been the case in Sri Lanka, where such measures had been taken in higher education when the Government noticed that the existing system of obtaining access to university, based on strict equality, or a meritocracy, tended to place students from rural areas with fewer educational facilities at a disadvantage. After the reform, the number of students from rural areas had increased considerably. But as a corollary of the reform, the number of students from the Tamil community had declined. Although the Supreme Court of Sri Lanka had ruled that the measures were constitutional inasmuch as they were temporary and in line with the general interest, the Tamils viewed them as a deliberate policy aimed at curbing their access to higher education and their dissatisfaction grew. Thus, affirmative action measures, which in some respects were undeniably encouraging, could have disastrous consequences when they were not properly understood.

69. He recommended that Mr. Bossuyt should also take into account the affirmative action measures contemplated by the Indian Constitution and the decisions taken by the Supreme Court of India in that connection.

70. Ms. DAES complimented Mr. Bossuyt on his preliminary report, which clearly set forth the basic principles of equality and non-discrimination. She shared the view of the Special Rapporteur that affirmative action consisted of special measures applied on a temporary basis. Referring to paragraphs 27 and 28 of the report concerning the Gerhardy v. Brown case, she said that the ruling by the Australian Supreme Court in that case constituted a milestone in the development of aboriginal land rights. She could provide Mr. Bossuyt with more recent decisions on such issues and recent legislation on indigenous populations adopted, in particular, in New Zealand and the United States. She also recommended that he give greater attention to the affirmative action taken on behalf of indigenous populations in virtually all parts of the world. She found the proposed questionnaire useful and urged Governments to respond to it.

71. Mr. JOINET, referring to Mr. Fan Guoxiang's statement, said that the Special Rapporteur himself had acknowledged that affirmative action could entail certain risks and should therefore be "carefully framed". But the special measures referred to in the context of affirmative action were not particularly exceptional. They resembled measures taken in states of emergency, when rights were temporarily limited for different reasons. When the desired aim was achieved, the emergency measures could be revoked.

72. At the practical level, he urged the Special Rapporteur to examine further whether there was a connection between affirmative action and the exercise of the right of self-determination. States had been known to pursue a settlement policy in order to annex a region, as France had done, for example, in New Caledonia. That kind of population policy inevitably had electoral implications. In some cases, therefore, democracy demanded that affirmative action be taken to prevent settlement policies from leading to imbalance in the electorate.

73. Mr. WEISSBRODT, referring to the working paper he had introduced the previous year on the rights of non-citizens and the comments and suggestions made on the subject, said that he had prepared a further, more expanded document, which was still in draft form and to be viewed as a work in progress. He hoped that his work would prove useful to the Special Rapporteur who would be entrusted with the task of preparing a comprehensive study on the matter.

74. His document reviewed existing jurisprudence regarding the rights of non-citizens, building on the previous year's work. He had consulted for the purpose the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) and those of other human rights treaty monitoring bodies.

75. The document also reviewed the jurisprudence of regional institutions, for instance the way in which the rights of non-citizens were protected in a number of European treaties.

76. Furthermore, the draft offered tentative conclusions and recommendations and identified areas requiring further study. A key conclusion was that any study of discrimination against non-citizens should take into account several critical factors, including the situation of different categories of non-citizens in relation to various categories of rights in countries at different stages of development and offering different rationales for such distinctions.

77. He hoped that his work and the comprehensive study authorized by the Economic and Social Council would assist CERD, other United Nations bodies, regional organizations and the international community as a whole in examining the distinctions made between different categories of non-citizens. He suggested that the Sub-Commission should consider the matter in cooperation with CERD and the Human Rights Committee. In addition, the Sub-Commission's work on non-citizens could contribute to the deliberations of the forthcoming World Conference against Racism.

78. One key goal of the comprehensive study should be the development of a standard for the purpose of ensuring that any distinctions were legitimate and did not constitute discrimination. The report might also suggest to CERD that it withdraw its somewhat outdated general recommendation 11 and prepare a general recommendation that took into account new developments in the field.

79. In conclusion, he expressed concern about continued discriminatory practices against non-citizens, which demonstrated the absence of effective standards relating to them. Moreover, the emergence of supranational legal entities such as the European Union and the North American Free Trade Agreement necessitated a review of the question of non-citizens' rights.

80 Mr. PREWARE expressed regret that the two World Conferences to Combat Racism and Racial Discrimination organized by the United Nations in 1978 and 1983 and the proclamation of three Decades to combat racism had failed to arrest the phenomenon.

81. The transformation in South Africa gave cause for hope, but developments in other parts of the world underscored the need for sustained initiatives by bodies such as the Sub-Commission. The promotion and protection of human rights called for the elimination of obstacles everywhere to the exercise of human rights by all. In that connection, the upsurge in xenophobia in certain societies would inevitably provoke international friction.

82. Xenophobia could arise from fear on the part of individuals who thought they alone were entitled to the benefits offered by the State and the community. A xenophobic individual was concerned to preserve jobs and opportunities for "natives", who were defined not only in terms of parentage and place of birth but also in terms of colour and culture. A xenophobe was intolerant of migrant workers and failed to recognize that foreigners had the right and ability to contribute positively to the community.

83. New information technology was used to spread racial hatred. The Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in his report to the United Nations General Assembly at its fifty-fourth session, had drawn attention to the significant increase in the number of Web sites spreading extremist ideas.

84. It should not be inferred from the fact that many remained silent in the face of racial hatred and xenophobia that the majority approved of such behaviour. Those who had the moral courage and political will to speak out against it were to be commended. The European Union had clearly demonstrated that it viewed such phenomena as dangerous and unacceptable by imposing sanctions on a member State that had accommodated in its Government political elements that supported xenophobic ideas.

85. It was not enough to recognize a threat; preventive or corrective action was also necessary. Governments had a responsibility to create a social environment, especially through education, that was more open to all, irrespective of colour, race, belief or country of origin.

86. The forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should encourage more vigorous action to eliminate racism and xenophobia.

87. Mr. BOND (International Human Rights Law Group), drawing attention to racial discrimination in the United States, referred to a particularly pernicious aspect, namely the disguising of such discrimination by attributing it, for example, to the "war on drugs" and to crime prevention. Racial discrimination was endemic in the United States criminal justice system. People of colour were often presumed guilty, arrested, subjected to police brutality and even killed on account of their race. African Americans accounted for 50 per cent of the American prison population although they represented only 6 per cent of the population as a whole. Young Blacks were more likely than Whites to be arrested and incarcerated and they were also given longer prison terms. Women of colour were also subject to forms of racial discrimination that were compounded by gender discrimination.

88. On behalf of the International Human Rights Law Group, he urged the United Nations to call on the Government of the United States of America to honour its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights treaties, to withdraw its reservations thereto, and to submit timely and accurate reports referring specifically to the issue of racial discrimination and racial bias in the criminal justice system. He also urged the United Nations to examine cases of racial discrimination in the United States criminal justice system and to consider sending Special Rapporteurs on mission to the United States. Lastly, it called for the inclusion of the issue of racial discrimination and racial bias in the American criminal justice system as a separate item on the agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

89. Ms. WARZAZI noted with concern that the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination did not seem to be honouring their commitments. Indeed the situation had been deteriorating for some 10 years. Thanks to the votes of a worrying percentage of the electorate, members of neo-Nazi parties and extreme right-wing racists were being hoisted into positions of power or at least held political office in municipal and local councils. The Internet was one of the means used to spread racist ideas.

90. There had also been outbreaks of racism and violence in Africa and Asia, where armed attacks and killings had claimed many innocent victims. The third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should produce short- and long-term solutions, but they would only be put into practice if the countries concerned showed real political will and committed themselves, both politically and financially, to the task of countering all forms of racism. One of the first steps to be taken by a number of Western countries was to withdraw their reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. When a country such as France enacted legislation that condemned statements or writings that cast doubt on the Holocaust, there was no reason why the legislation should fail to mention racism and racial discrimination.

91. Noting that article 1, paragraph 2, of the International Convention was inconsistent with article 2 of the International Covenant on Civil and Political Rights, she urged that its content be made more explicit so that the distinctions between citizens and non-citizens did not affect access to public service in a country, as stipulated in article 25 of the Covenant.

92. It should be possible for victims of racism and racial discrimination to appear before CERD when it considered the report of the State party concerned and to file petitions under the 1503 procedure so that gross and massive violations of their human rights were brought to the attention of the Commisssion on Human Rights just like other violations.

93. She was concerned about the deterioration in the living conditions of migrant workers, whether or not their papers were in order, and about the number of cases in which persons who were seeking some means of subsistence lost their lives in what were sometimes the most atrocious circumstances. It was important for host States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

94. She deplored the anomalous inconsistency between the developed countries' need for manpower and their determination to erect barricades. Traffickers were earning billions of dollars from the trade in illegal workers. As the European countries and Japan experienced shortages of young manpower, the developing countries yet again contributed to their wealth by supplying them with labour, including brainpower. Migrant workers clearly needed international protection; they alone were not covered by an international instrument because the existing instrument was rejected by the developed countries. She therefore hoped that the World Conference would recommend the establishment, within the United Nations, of a monitoring body which, in coordination with ILO, could keep a close eye on the situation of migrant workers, who more and more frequently tended to be women.

95. Lastly, she suggested that the Sub-Commission should propose to the General Assembly at its next session that it proclaim 18 December each year a day of solidarity with migrant workers.

The meeting rose at 1 p.m.